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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 361

ARMAND EDWARD BLACKMAR, PETITIONER,

vs.

L. F. GUERRE, MANAGER, VETERANS ADMINISTRATION, REGIONAL OFFICE No. 3021, NEW ORLEANS, LOUISIANA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 1, 1951

CERTIORARI GRANTED NOVEMBER 26, 1951

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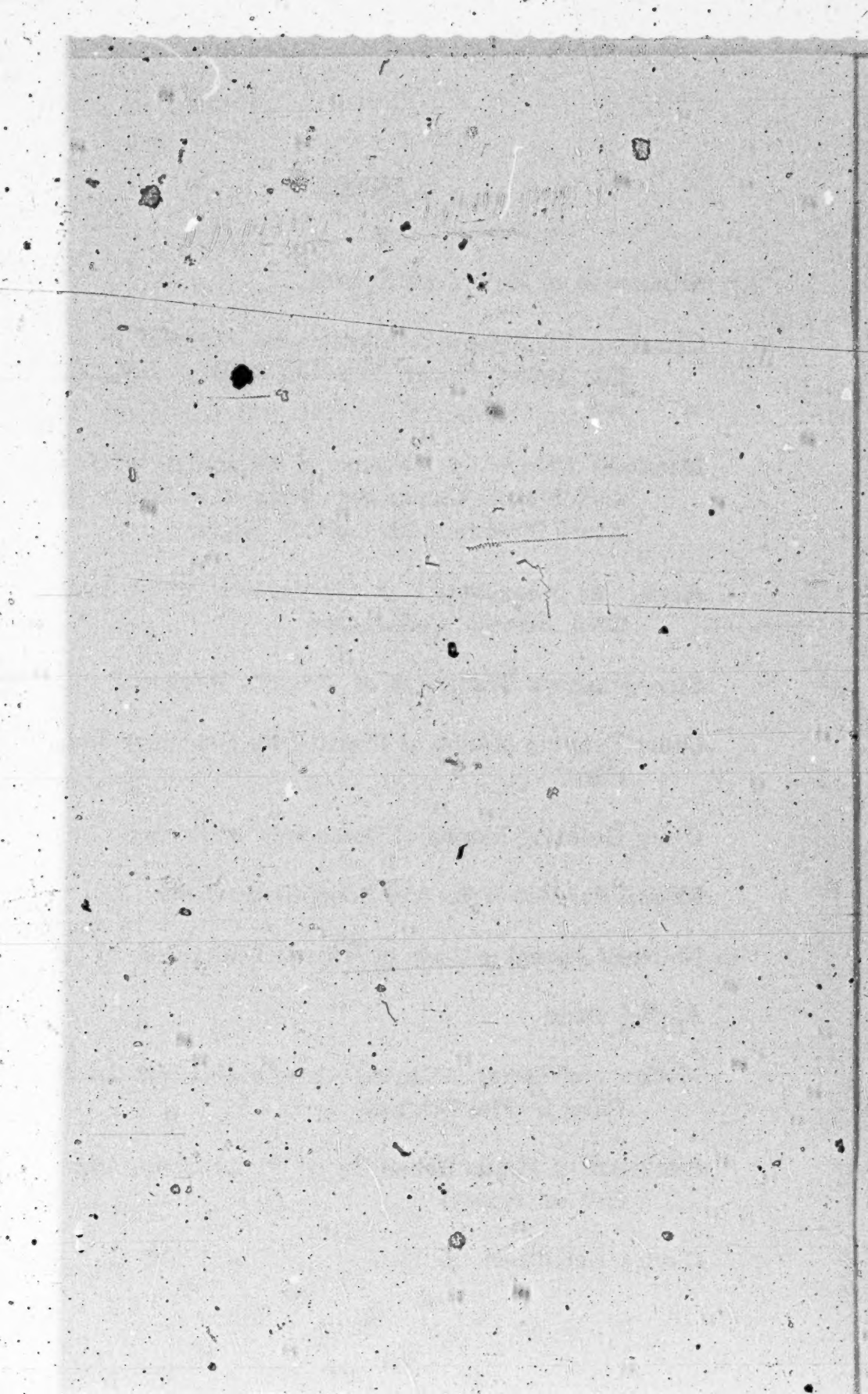

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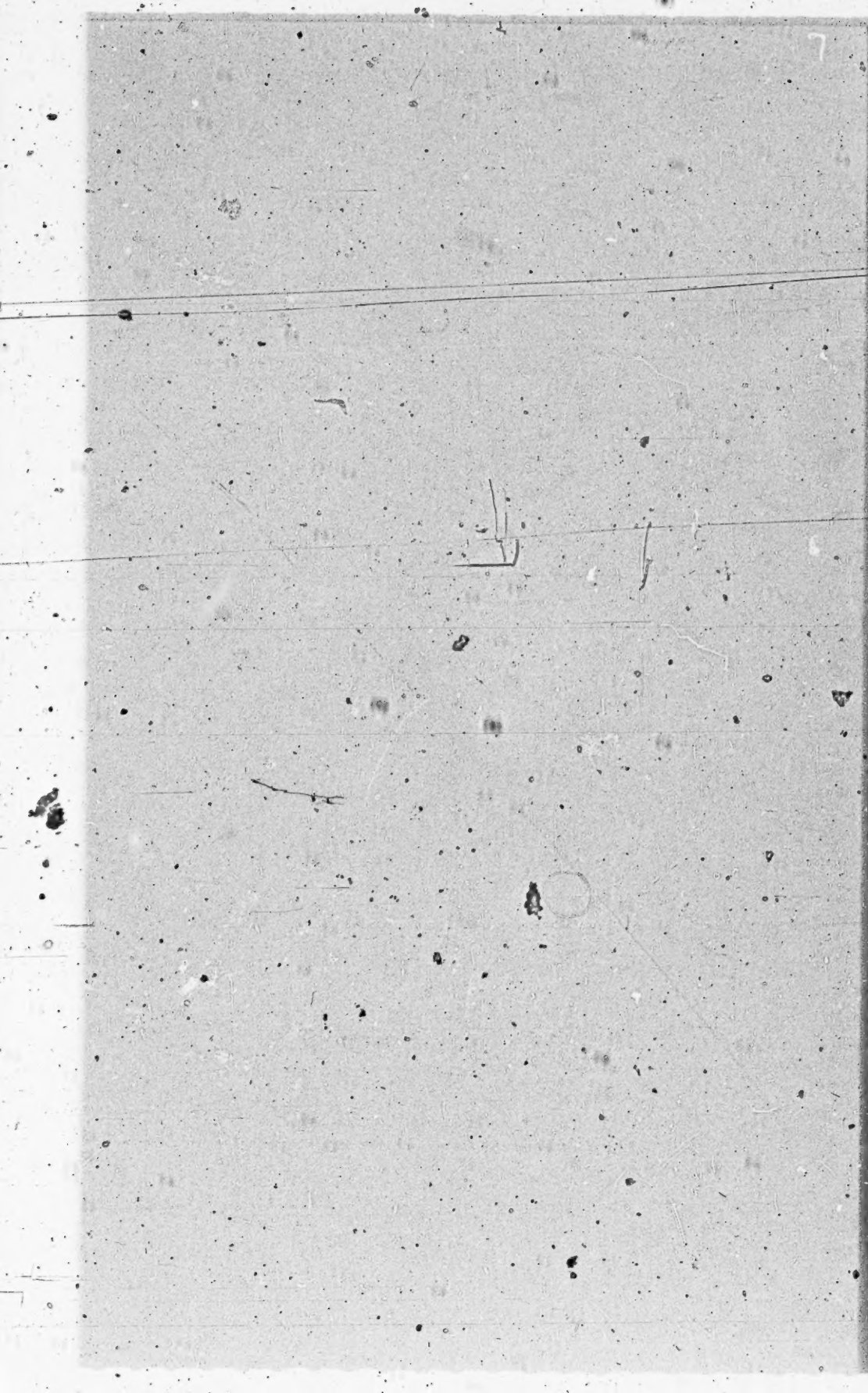

UNITED STATES OF AMERICA,
DISTRICT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF LOUISIANA,
NEW ORLEANS DIVISION.

No. 2095 Civil Action

ARMAND EDWARD BLACKMAR

versus

L. F. GUERRE, Manager, Veterans Administration, Regional Office No. 3021, New Orleans, Louisiana, and UNITED STATES CIVIL SERVICE COMMISSION

Appearances:

Rene R. Nicaud, Esq., Attorney for Appellant.

N. E. Simoneaux, Esq., Assistant United States Attorney Attorney for Appellees.

APPEAL from the District Court of the United States for the Eastern District of Louisiana, to the United States Court of Appeals for the Fifth Circuit, returnable within forty (40) days from the 16th day of November, 1950, at the City of New Orleans, Louisiana.

EXTENSION of time granted by the Honorable United States District Court, Eastern District of Louisiana, bringing the return day up to and including February 14, 1951.

1

STIPULATION OF RECORD ON APPEAL

Filed: January 15, 1951.

(Number and Title Omitted)

It is stipulated by RENE R. NICAUD, counsel for plaintiff, Armand Edward Blackmar, and John N. McKay, United States Attorney for the Eastern District of Louisiana, counsel for defendants, L. F. Guerre, manager, Veterans Administration Regional Office No. 3021, New Orleans, Louisiana, and United States Civil Service Commission, that the record on appeal in this case shall consist of the following:

1. The complaint filed by the plaintiff on March 31, 1948, excluding all exhibits attached thereto.

2. The return of the United States Marshall and service on the United States Civil Service Commission through A. J. Leach, Regional Director, Tenth United States Civil Service Region on April 2, 1948.

3. The fact that the returns of the United States Marshall show further service of the summons and complaint as follows:

Date of Service	Persons Served
April 1, 1948	Robert Weinstein, United States Attorney for the Eastern District of Louisiana, Room 237, P. O. Bldg., New Orleans, Louisiana.

April 2, 1948 — L. F. Guerre, Manager, Veterans Administration Regional Office, Masonic Temple, New Orleans, La.

April 1, 1948 — Mailing of copy of summons and of complaint by Registered Mail to Attorney General of the United States at Washington, District of Columbia, and return receipt thereon dated April 5, 1948.

April 2, 1948 — Mailing of copy of summons and of complaint to the United States Civil Service Commission, by Registered Mail, Washington, District of Columbia, and return receipt thereon dated April 5, 1948.

4. The fact that on June 1, 1948, the defendants filed a motion to dismiss for want of jurisdiction and lack of venue; that this motion was argued and submitted on May 25, 1949; that in plaintiff's brief and in the argument, the Court's attention was called to the fact that under 28 U.S.C.A. 1404, venue was no longer a grounds for dismissal; that this motion to dismiss was denied by the District Court by order rendered and entered June 13, 1949.

5. The answer filed on behalf of defendants on August 2, 1949.

6. The fact that on August 15, 1949, by order of the District Court of August 11, 1949, the record of the

administrative proceedings was filed in these proceedings.

7. The fact that on May 4, 1950, a motion for summary judgment was filed on behalf of the plaintiff; that said motion was argued and submitted on June 7, 1950; that on June 6, 1950, the defendants' filed a counter-motion for a summary judgment, together with a motion to dismiss in which they reurged their objection to the jurisdiction and venue of the District Court for the Eastern District of Louisiana.

8. Comments of the Honorable Herbert W. Christenberry, Judge of the District Court on July 12, 1950, after the conclusion of the argument and submission of the defendants' motion for summary judgment and motion to dismiss.

9. Orders of the District Court rendered October 16, 1950, and entered October 18, 1950, denying plaintiff's motion for summary judgment, sustaining defendant's motion to dismiss and accordingly, dismissing plaintiff's suit.

10. Motion for new trial and relief from order filed by plaintiff on October 27, 1950.

11. The fact that the District Court by order rendered November 8, 1950, and entered November 13, 1950, denied plaintiff's motion for new trial and relief from order.

12. Notice of appeal filed by plaintiff November 16, 1950.

13. Appeal bond.

14. It is further stipulated that the record of administrative proceedings be transmitted to the appellate court in the original as per order of this Court, dated December 19, 1950.

15. The said order dated December 19, 1950.

16. The fact that by order dated December 19, 1950, the time within which the record could be filed with the appellate court therein docketed was extended to within 50 days from December 26, 1950.

New Orleans, Louisiana, January 12, 1951.

(Signed) RENE R. NICAUD
Attorney for Plaintiff, 501 Marine Building, New Orleans, Louisiana

(Signed) N. E. SIMONEAUX
Assistant United States Attorney, Room 237, P. O. Bldg, New Orleans, La.

COMPLAINT TO REVIEW ADMINISTRATION PROCEEDINGS AND FOR RELIEF UNDER THE DECLARATORY JUDGMENT ACT

Filed: March 31, 1948.

(Number and Title Omitted)

1.

The plaintiff, ARMAND EDWARD BLACKMAR, is a resident of the Parish of Orleans, State of Louisiana. He is an honorably discharged veteran of the armed forces of the United States who had served on active duty in World War I, and at the time of his wrongful suspension and dismissal hereinafter set forth, had completed a probationary or trial period employed in the Civil Service in the Veterans Administration, Regional Office, No. 3021, P & S Classification No. 4 at a basic salary of $5,152.80 per annum.

2.

The defendant, L. F. Guerre, is the duly appointed and qualified manager of the Veterans Administration, Regional Office No. 3021, New Orleans, Louisiana, an agency of the United States; that he is an officer of the United States in charge of the said Regional Office of the Veterans Administration and is a resident of the Parish of Orleans, State of Louisiana.

3.

The defendant, the United States Civil Service Commission is an agency of the United States Government and is represented in this jurisdiction by A. J. Leach, the duly

qualified and appointed Regional Director, of the Tenth United States Civil Service Region, who is a resident of the Parish of Orleans, State of Louisiana.

4.

This is a suit of a Civil nature, arising under the Constitution and the laws of the United States, relating to an Act of Congress, the Veterans' Preference Act of 1944, (5 U. S. C. 851-869). It presents and involves an actual controversy between plaintiff and defendant, L. F. Guerre, in his aforesaid capactiy, and the validity and effect of certain proceedings of the United States Civil Service Commission and the matter in controversy exclusive of interest and cost exceeds $3,000.00 and is brought under the general jurisdiction of this Court, (28 U.S.C. 41 (1)), and under the Administrative Procedure Act, (5 U.S.C. 1001-1011), to review, set aside, and annul the hereinafter described action of defendant, L. F. Guerre, in his capacity as Manager of the Veterans Administration, Regional Office No. 3021, New Orleans, Louisiana, and the hereinafter described and complained of action of the United States Civil Service Commission, and for declaratory relief under the Federal Declaratory Judgment Act (28 U.S.C. 400).

Plaintiff has no other adequate remedy in any Court and has exhausted all of his Administrative remedies.

5.

The wrongful administrative acts of which plaintiff complains, and by which he has been aggrieved are his suspension without pay from his said position with the Veterans Administration on January 2, 1947. by the purported notifi-

cation of that date annexed hereto, marked Exhibit "A" and made part hereof, and his discharge from said position, effective March 2, 1947 by the action of the defendant, L. F. Guerre, in his aforesaid capacity, and the action of the United States Civil Service Commission in granting to the Veterans' Administration an appeal from the unanimous decision of the Tenth United States Civil Service Region of May 5, 1947 and reversing the said decision of the Tenth Civil Service Region which found plaintiff's dismissal unwarranted and recommended his reinstatement.

A summary of the facts and administrative proceedings up to, but exclusive of, the final hearing before the United States Civil Service Commission is set forth on pages 1 to 8 of plaintiff's brief before the said Commission which brief is hereto annexed, marked Exhibit "B" and made part hereof; that as plaintiff could not afford the expense of an additional trip to Washington D. C., the matter was submitted on December 9, 1947, to the full Commission on the annexed brief. At this hearing, the Veterans Administration was given 15 days to file its reply brief and it was not until February 3, 1948, that plaintiff was furnished a copy of the Veterans Administration brief which had been filed with the Commission, January 12, 1948. On February 16, 1948, plaintiff received a letter from the Commission dated February 11, 1948, advising him that:

> "The decision of the Commission under date of August 15, 1947, reversing the finding of the Tenth Civil Service Region and approving the action of the Veterans Administration in removing Mr. Blackmar has been affirmed."

6.

The action of defendant, L. F. Guerre, in his aforesaid

capacity, in suspending and discharging plaintiff from his said position was unwarranted, arbitrary, illegal, null, and void for the reasons that:

(1) The notice of proposed action dated January 2, 1947, and the notice of adverse action dated February 14, 1947, of the defendant, L. F. Guerre, in his aforesaid capacity, did not state the reasons in writing for his suspension and discharge specifically and in detail as required by Section 14 of the Veterans' Preference Act of 1944 and the regulations of the Civil Service Commission pursuant thereto.

(2) The charges averred were not such cause as would promote the efficiency of the service and could not constitute a lawful basis for the dismissal of a veteran under Section 14 of the Veterans' Preference Act of 1944, the regulations of the Civil Service Commission pursuant thereto, and the rules of the Veterans Administration.

(3) Plaintiff was never afforded a fair and adequate hearing by the Veterans Administration.

(4) The said action was contrary to the law and the evidence, and there was no substantial evidence to support the alleged charges.

And as will more fully appear from the said annexed Exhibit "B", made part hereof, and to the extent not contrary to the foregoing, as will appear from the duplicate original of the said unanimous decision of the Tenth United States Civil Service Region approved May 5, 1947, annexed

hereto, marked Exhibit "C", and made a part hereof, which found the action of the defendant unwarranted and ordered the reinstatement of plaintiff to his aforesaid position.

7.

That the subsequent action of the United States Civil Service Commission in granting the Veterans Administration an appeal and in reversing the decision of the Tenth United States Civil Service Region was unwarranted, arbitrary, illegal, null and void for the following reasons, to-wit:

(1) In granting an appeal to the Veterans Administration from the decision of the Tenth Civil Service Region, the Civil Service Commission exceeded its authority as no such appeal is provided or authorized by law; that the regulations of the United States Civil Service Commission purporting to authorize such an appeal are illegal and void for they are neither reasonable nor are they in harmony with the purpose of the Veterans' Preference Act of 1944. In granting such an appeal, over the objections of plaintiff's counsel, the Commission subjected the defendant to a trial at Washington, D. C., 1200 miles from his venue, where his witnesses were unavailable, considered charges and ex parte evidence which had been excluded in the Regional hearing and thereby deprived plaintiff of the right of cross examination and rebuttal, all in violation of the laws of the United States (Section 14 of the Veterans' Preference Act of 1944; Section 7 (C) Administrative Procedure Act and other laws) and the regulations of the Civil Service Commission, (12 F. R. 207, Section 22.9).

(2) Based on the record as examined by plaintiff's Attorney, prior to the final Hearing before the United States Civil Service Commission, it is averred that the appeal by the veterans Administration was not filed within seven (7) days from the date of receipt of the decision of the Tenth United States Civil Service Region as required by the regulations of the United States Civil Service Commission.

(3.) In considering charges and evidence in support thereof, and approving adverse action, as to which the plaintiff had not been notified in writing of any and all reasons specifically and in detail, as required by the express provisions of Section 14 of the Veterans' Preference Act of 1944, and the regulations of the Civil Service Commission pursuant thereto.

(4) In considering the Third Charge, which was based on statements made by plaintiff in an Efficiency Rating Appeal under the honest belief that they were a proper part thereof, and which charge violated the rule of the Veterans Administration that the exercise of the right to an Efficiency Rating Appeal cannot be the cause of action prejudicial to an employee. These statements were made by plaintiff as an officer of a Governmental Agency to the officers of the same Governmental Agency in an official request for an investigation of conditions which appeared to him to justify an investigation for the good of the Government, and therefore, could not properly be the basis of plaintiff's dismissal under the Veterans' Preference Act of 1944. If this charge can properly be considered the basic of the discharge of a Veteran then it is averred, in the alternative, that

there was no investigation or Hearing thereof as required by Section 14 of the Veterans' Preference Act of 1944 or the regulations pursuant thereto and that there is no evidence in the record to substantiate it.

(5) In considering internal rules and regulations of the United States Civil Service Commission, not available to the general public and to plaintiff, in making its decision which practice violates the laws of the United States (Section 3 & 4, Administrative Procedure Act, Federal Register Act 44 U.S.C. 301-314 and other laws).

(6) In disregarding the established principle of Appellate law that the finding of a lower tribunal on questions of fact should not be reversed unless manifestly erroneous.

(7) The Hearing granted the Veterans Administration on August 15, 1947, at Washington D. C. on its appeal from the decision of the Tenth Civil Service Region was held before the Civil Service Commission's Board of Appeal and Review, composed of three members. It is averred on information and belief that each of said members made individual findings and recommendations to the Civil Service Commission; that plaintiff and his Attorney were refused the right to examine the findings and recommendation of the said Board of Appeals and Review and such analysis as the Commission may have made thereof; and therefore plaintiff had no way of knowing what in fact was the decision of the said Board, what evidence it considered, its evaluation thereof, and in what respect the decision of the

Regional Board was considered erroneous. Thus plaintiff and his counsel were effectively deprived of the right of knowing and requiring that his case be decided on appeal by those who heard it and of the opportunity to analyze the findings of his Judges on appeal so as to determine and point out for further review what errors may have been committed by them; that likewise no findings of the Commission or reasons for its reversal of the Regional decision, were ever given, or made available to plaintiff or his Attorney. That the said refusal of the Commission and its failure to furnish to plaintiff, findings and reasons for its decision, constitutes a violation of the laws of the United States (Section 14 of the Veterans' Preference Act of 1944; Section 3 (b) and 8 (b) of the Administrative Procedure Act and other laws) and of the United States Civil Service Regulations.

(8) In deciding the case contrary to the law and the evidence and without any substantial evidence to support its decision.

And as more fully urged before the United States Civil Service Commission, in Exhibit "B" annexed hereto and made a part hereof.

8.

For the reasons set forth in Articles Six and Seven hereof, plaintiff was denied a fair hearing and due process of law in the procedure of the said administrative agencies and the effect of the resulting administrative determinations, recommendations and orders is to deprive the plaintiff of his

property without due process of law in violation of the Fifth amendment of the Constitution of the United States.

9.

Since the said unlawful suspension and discharge of plaintiff, he has at all times been ready, willing and able to discharge the duties of the said position.

Under the provisions of Section 14 of the Veterans' Preference Act of 1944, as amended, as corrective action for said wrongful suspension and discharge, plaintiff is entitled to an order from the United States Civil Service Commission directing defendant, L. F. Guerre, in his aforesaid capacity, to reinstate plaintiff to the said position with the Veterans' Administration from which he was wrongfully suspended and discharged and providing that he be restored the pay for the said position from January 2, 1947, the date of his wrongful suspension, to the date of the payment thereof.

10.

The record of the aforesaid administrative proceedings is in this Jurisdiction in the possession, custody and control of A. J. Leach, in his capacity as Regional Director of the Tenth United States Civil Service Region.

Wherefore, Plaintiff Prays:

(1) That the United States Civil Service Commission through A. J. Leach, Regional Director of the Tenth United States Civil Service Region be served with a

copy of this complaint and that it certify and file in this Court, with its answer, the entire record in the aforementioned administrative proceedings.

(2) That this Court review the said administrative proceedings and that after due proceedings had, it grant plaintiff a Judgment or Decree:

(a) Setting aside and annulling, for the reasons hereinabove stated, the said action of defendant, L. F. Guerre, in his aforesaid capacity, in suspending and discharging plaintiff from his aforesaid position with the Veterans Administration, and setting aside and annulling, for the reasons hereinabove stated, the said action of the United States Civil Service Commission in granting the Veterans Administration an appeal from, and in reversing, the decision of the Tenth United States Civil Service Region which found plaintiff's discharge unwarranted and recommended his reinstatement.

(b) Declaring plaintiff's rights as respects to the aforesaid administrative proceedings, and declaring particularly that plaintiff is entitled to an order from the United States Civil Service Commission directing the defendant, L. F. Guerre, in his aforesaid capacity, to restore plaintiff to his aforesaid position with the Veterans Administration and providing that plaintiff be restored the pay for his said position from January 2, 1947 to the date of the payment thereof, the exact amount of which to be determined in appropriate proceedings before the United States Civil Service Commission.

(3) That the plaintiff be granted such other, further and different relief as may be just and equitable in the premises.

(Signed) RENE R. NICAUD
Attorney for Plaintiff
327 Balter Bldg.
New Orleans, La.

MARSHAL'S RETURN ON REVERSE OF SUMMONS.

Filed: April 6, 1948.

(Number and Title Omitted)

Received on the 2nd day of April, and on the 2 day of April, 1948, at 4:40 o'clock P.M., I served a copy of the within Summons and Complaint, on the within named U. S. Civil Service Commission thru A. J. Leach Regional Director 10th U. S. C. S. Region, by leaving same in the hands of William Wallace McDougall, Deputy Regional Director, 10th U.S. C. S. Region at Federal Bldg. N. O., La.

(Signed) H. C. RICHARDSON
United States Marshal

By: (Signed) RUTH B. PICARD
Deputy

ANSWER OF DEFENDANTS L. F. GUERRE AND UNITED STATES CIVIL SERVICE COMMISSION.

Filed: August 2, 1949.

(Number and Title Omitted)

Now into Court, through undersigned counsel, come L. F. Guerre, Manager, Veterans Administration, Regional Office No. 3021, New Orleans, Louisiana, and United States Civil Service Commission, defendants herein, with full reservation of their rights under the exceptions to this Honorable Court's jurisdiction and venue herein and without in any manner abandoning same, for answer to plaintiff's complaint, shows:

1.

Article one is admitted.

2.

Article two is admitted.

3.

In answer to article three defendants admit that A. J. Leach is Regional Director, Tenth United States Civil Service Region, and a resident of the Parish of Orleans, State of Louisiana, but deny that A. J. Leach represents the United States Civil Service Commission for the purpose

of service of process in order to bring said Commission or any of its members within the jurisdiction of this Honorable Court.

4.

Answering article four of plaintiff's complaint defendants admit that this is a suit of a civil nature relating to the Veterans Preference Act of 1944 (T. 5 U.S.C. Sections 761-869) and that it involves the validity and effect of certain proceedings of the United States Civil Service Commission, and that the matter in controversy, exclusive of interest and costs, exceeds $3,000.00. Defendants admit that plaintiff has exhausted all of his administrative remedies, but deny all other allegations of fact and conclusions of law in plaintiff's said article.

5.

Defendants admit the allegations of article five of plaintiff's complaint except that they deny having performed any wrongful Administrative acts in this case.

6.

Defendants deny the allegations of article six except that it is admitted that the Tenth Civil Service Region rendered a decision on May 5, 1947, ordering the reinstatement of plaintiff as an employee of the Veterans Administration.

7.

Article seven is denied.

8.

Article eight is denied.

9.

Article nine is denied.

10.

Article ten is denied. The entire Civil Service record in this case, however, has been transmitted to the office of the United States Attorney for the Eastern District of Louisiana by the United States Civil Service Commission and will be filed in this case upon proper motion being submitted to this Honorable Court and order issued to that effect.

11.

Further answering plaintiff's complaint, defendants reassert the following defenses to this action:

(a) This Honorable Court's lack of jurisdiction over the Civil Service Commissioners who are inhabitants of the District of Columbia.

(b) The Court's lack of jurisdiction over the Administrator of Veterans' Affairs who is also an inhabitant of the District of Columbia.

(c) The Court's lack of jurisdiction of this action under the provisions of Section 10 of the Administrative Procedures Act, Title 5, U.S.C. Section 1009 (2), whereby actions falling solely within Agency discretion and for which adequate Administrative review is provided are excluded from the operation of said Section 10.

(d) The Court's lack of jurisdiction over this action in that it is an original action for a writ of mandamus.

(e) Plaintiff's inability to state a claim upon which this Honorable Court can grant any relief inasmuch as the action by which he was discharged was authorized by law and in conformity with applicable Civil Service Commission rules and regulations.

12/

Defendants further aver that the record of proceedings before the Civil Service Commission in this case will indicate that the proceedings were regular in every respect and that plaintiff's separation from service as an employee of the Veterans Administration was fully justified.

(Signed) J. SKELLY WRIGHT,
(J. Skelly Wright),
United States Attorney

(Signed) N. E. SIMONEAUX,
(N. E. Simoneaux),
Assistant United States Attorney, Room 237 Postoffice Bldg., New Orleans, La.

STENOGRAPHER'S TRANSCRIPT OF "COURT'S REMARKS"

Filed: August 17, 1950.

(Number and Title Omitted)

The Court:

Well, I will say what I said before about this case: It seems very clear to me that when the Chairman of the Board of Review, if he wrote this letter himself, or whoever wrote the letter, said, "The Commissioners, therefore, have approved recommendation that the decision of the Tenth Region be reversed and the recommendation that Mr. Blackmar be restored to the position from which he was removed is hereby withdrawn," he deliberately intended to convey the thought that the majority of the Board of Review had so decided and that the recommendation referred to was the recommendation of that Board, not of a minority member.

I think that was entirely unbecoming an official of the Federal Government. I know the District Attorney's office has no control over such cases, but the Attorney General has. When he represents Federal agencies he is acting as their attorney and is governed largely as every other attorney is and is not required to urge everything presented to him by some Governmental agency or bureau.

Pretermitting the question of whether venue is properly laid and what action will be taken on these motions, it is my view, from all that has been shown here, that common decency and honesty should prompt the responsible parties of

the Civil Service Commission to reinstate this plaintiff and not have the docket of this Court cluttered up with a case of this character: this Court or any other Court.

Now, you will have twenty days within which to file the brief as *Amicus Curiae*. The Court will dispose of this matter promptly when that is done.

Certified: A true and correct record of proceedings in said case, made by me at New Orleans, Louisiana the 12th day of July, 1950.

(Signed) WALTER H. HICKMAN
(Walter H. Hickman)
Official Court Reporter

ORDER DENYING MOTION OF PLAINTIFF FOR SUMMARY JUDGMENT.

Minute Entry: October 16th, 1950, Christenberry, J:

(Number and Title Omitted)

This cause came on to be heard on June 7th, 1950 on the motion of plaintiff for summary judgment and was argued by counsel for the respective parties and submitted and the Court took time to consider;

Now therefore, after due consideration thereof;

It Is Ordered that the motion of plaintiff for summary judgment be, and the same is hereby, Denied.

(s) H.W.C.

ORDER GRANTING MOTION OF DEFENDANT TO DISMISS.

Minute Entry: October 16th, 1950, Christenberry, J:

(Number and Title Omitted)

This cause came on to be heard on July 12th, 1950 on the motion of defendants to dismiss or for summary judgment; and was argued by counsel for the respective parties and submitted and the Court took time to consider;

Now therefore, after due consideration thereof;

It Is Ordered By The Court that the motion of defendants to dismiss is granted on the following grounds:

1. This Court lacks jurisdiction over the persons of the United States Civil Service Commissioners because jurisdiction of this Court is not invoked on the ground of diversity of citizenship and said defendants are not residents or inhabitants of this district.

2. The United States Civil Service Commissioners are indispensible parties who have not been and cannot be subjected to the jurisdiction of this Court.

It Is Further Ordered that plaintiff's suit is accordingly, Dismissed.

(S.) H. W. C.

MOTION FOR NEW TRIAL AND RELIEF FROM ORDER

Filed October 27, 1950.

(Number and Title Omitted)

The plaintiff moves the Court as follows:

1. To set aside the order dismissing his complaint and for a new trial on the following grounds:

(a) That the Court erred in holding that it lacked jurisdiction over the persons of the United States Civil Service Commission.

(b) That the Court erred in holding that the United States Civil Service Commissioners are indispensable parties who have not been and cannot be subject to the jurisdiction of this Court.

(c) That the Court erred in implicitly holding that it did not have jurisdiction over the Civil Service Commission and that the Commission was not properly before it by the service effected on its Regional Director in this district, or that the Commission is an indispensable party.

(d) That the Court erred in disregarding the fact that this is a suit against the United States Civil Service Commission and L. F. Guerre, Manager, Veterans Administration, Regional Office No. 3021, New Orleans, Louisiana, in their official capacities as agents or agencies of the United States Government and that, therefore, this is a suit against the United States.

2. If the foregoing motion for a new trial is granted, plaintiff further moves the Court that he be granted leave to amend his petition so as to make the United States a party defendant "eo nominee".

3. In the alternative, plaintiff moves the Court that he be relieved under Rule 60 of the Federal Rule of Civil Procedure from the said order dismissing his complaint for the reason that because of mistake, inadvertent or excusable error, he failed to make the United States a party "eo nominee" and for leave to amend his petition to so make the United States a party defendant, "eo nominee".

(Signed) RENE R. NICAUD
(Rene R. Nicaud),
Attorney for Plaintiff, Armand Edward Blackmar, 501 Marine Bldg., New Orleans, Louisiana

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NOTICE OF MOTION

To: N. E. Simoneaux, Esq.
Assistant United States Attorney
Room 237 Post Office Building
New Orleans, Louisiana

Please take notice, that the undersigned will bring the above motion on for hearing before this Court at Room .... United States Courts and Post Office Building, New Or-

leans, Louisiana, on the 8 day of November, 1950, at 10:00 o'clock A. M. or as soon thereafter as counsel can be heard.

(Signed) RENE R. NICAUD
(Rene R. Nicaud),
Attorney for Plaintiff, Armand Edward Blackmar, 501 Marine Bldg., New Orleans, Louisiana.

CERTIFICATE

I hereby certify that a copy of the above notice has been mailed or delivered to N. E. Simoneaux, Assistant United States Attorney, Room 237 Post Office Building, New Orleans, Louisiana, on this 27 day of Oct., 1950.

(Signed) RENE R. NICAUD
(Rene R. Nicaud),
Attorney for Plaintiff

NOTICE OF APPEAL TO COURT OF APPEALS UNDER RULE 73(B).

Filed: November 16, 1950.

(Number and Title Omitted)

Notice is hereby given that Armand Edward Blackmar, plaintiff above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the Order dismissing his complaint entered in this action on October 18, 1950.

(Signed) RENE R. NICAUD
(Rene R. Nicaud),
Attorney for Plaintiff, Armand Edward Blackmar, 501 Marine Bldg., New Orleans, Louisiana.

APPEAL BOND.

Filed; December 16, 1950.

(Number and Title Omitted)

Know All Men By These Presents, that I, Armand Edward Blackmar, as principal and Mrs. Felix O. Rousset and Edward M. Rowley, as surety, are held and firmly bound unto the United States of America, in the sum of Two Hundred Fifty and No/100 ($250.00) Dollars to the paid to the said United States of America, its attorneys, successors, or assigns to which payment we bind ourselves, our successors and assigns, jointly and severally.

Sealed with our seals and dated this 15 day of December, 1950.

Whereas on October 16, 1950, in an action in the District Court of the United States of the Eastern District of Louisiana, between Armand Edward Blackmar, plaintiff, and L. F. Guerre, Manager, Veterans Administration Regional Office No. 3021, New Orleans, Louisiana, and United States Civil Service Commission, agencies of the United States of America, defendants, an order was rendered against the said Armand Edward Blackmar dismissing his suit and the said plaintiff has filed a notice of appeal from said order of dismissal.

Now, the condition of this obligation is that if the said Armand Edward Blackmar shall prosecute his appeal with effect and pay all costs if the appeal is dismissed, or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, then this obligation

to be void, otherwise to remain in full force and effect.

In Witness Whereof, we have hereunto set our hands and seals this the day first above written.

Witnesses:

(S.) MARJORIE W. NICAUD

(S.) BOBBIE V. GOLDEN

(S.) ARMAND EDWARD BLACKMAR
Principal

(S.) MRS. FELIX O. ROUSSET

and

(S.) EDWARD M. ROWLEY
Surety

State of Louisiana
Parish of Orleans

AFFIDAVIT AND ACKNOWLEDGMENT OF SURETY

Mrs. Felix O. Rousset and Edward M. Rowley, who, after being duly sworn, say:

That they are each worth in excess of $250.00 over and above all of their debts and obligations in assets that can be subjected to levy under execution, and that they reside in the Parish of Orleans, and that they acknowledge that they executed the above and foregoing instrument as their own free act and deed.

(Signed) MRS. FELIX O. ROUSSET

(Signed) EDWARD M. ROWLEY

Sworn to and subscribed to before me on this the 15 day of December, 1950

(Seal) (Signed) RENE R. NICAUD

Notary Public

AFFIDAVIT OF PRINCIPAL

Armand Edward Blackmar, being duly sworn, says that he is informed and believes that Mrs. Felix O. Rousset and Edward M. Rowley the surety on this bond, each is worth over and above their debts and obligations in assets that can be subjected to levy under execution, the amount for which they have bound themselves in this bond, and does acknowledge that he executed the above and foregoing instrument as his own free act and deed.

(Signed) ARMAND EDWARD BLACKMAR

Sworn to and subscribed to before me on this the 15 day of December, 1950

(Seal) (Signed) RENE R. NICAUD
Notary Public

MOTION AND ORDER ALLOWING CERTAIN EXHIBITS TO BE FILED IN THE ORIGINAL

Filed: December 19, 1950.

(Number and Title Omitted)

On motion of Armand Edward Blackmar, plaintiff, appearing herein through Rene R. Nicaud, attorney, and suggesting to the Court that the record of the administrative proceedings in this case is extremely voluminous and the

cost of printing same would be prohibitive, and that it would be advisable that the said administrative record be before the Circuit Court of Appeals for reference purposes;

Plaintiff moves the Court for an order permitting him to file the original record of the administrative proceedings in the Circuit Court of Appeals as an exhibit without the necessity of having same printed and incorporated in the printed record of these proceedings.

And on further suggesting to the Court that counsel for defendants, the United States Attorney for the Eastern District of Louisiana, has no objection to the granting of the said order,

It Is Ordered By The Court that plaintiff be permitted to file the original record of the administrative proceedings in the Circuit Court of Appeals as an exhibit without the necessity of having same printed and incorporated in the printed record of these proceedings.

New Orleans, Louisiana, this 19th day of December, 1950.

(Signed) HEBERT W. CHRISTENBERRY
United States District Judge

(Signed) RENE R. NICAUD
Attorney for Plaintiff
501 Marine Bldg., New Orleans, La.

No Objection:

(Signed) N. E. SIMONEAUX
Assistant United States Attorney, Room 237, P. O. Bldg., New Orleans, La.

STATEMENT OF POINTS RELIED ON BY PLAINTIFF AND APPELLANT ON APPEAL.

Filed: January 15, 1951.

(Number and Title Omitted)

The plaintiff relies on the following points of error in the District Court's order dismissing his complaint:

1. That the Court erred in holding that it lacked jurisdiction over the persons of the United States Civil Service Commissioners.

2. That the Court erred in holding that the United States Civil Service Commissioners are indispensable parties who have not been and cannot be subject to the jurisdiction of this Court.

3. That the Court erred in implicitly holding that it did not have jurisdiction over the Civil Service Commission and that the Commission was not properly before it by the service effected on its Regional Director in this district, or that the Commission is an indispensable party.

4. That the Court erred in disregarding the fact that this is a suit against the United States Civil Service Commission and L. F. Guerre, Manager, Veterans Administration, Regional Office No. 3021, New Orleans, Louisiana, in their official capacities as agents or agencies of the United States Government and that, therefore, this is a suit against the United States.

5. That the Court erred in refusing to grant his motion for a new trial.

6. That the Court erred in refusing to relieve plaintiff under Rule 60 of Federal Rules of Procedure from the order dismissing his complaint.

7. That the Court erred in refusing to permit plaintiff to amend his petition so as to make the United States a party "eo nominee".

8. The Court erred in denying the plaintiff's motion for a summary judgment.

9. In the alternative, in the event the District Court was correct in its ruling that it did not have venue of this case, it erred in dismissing plaintiff's complaint since venue is no longer a grounds for dismissal, but in such event, the suit should have been transferred to the proper Court.

(Signed) RENE R. NICAUD
(Rene R. Nicaud),
Attorney for Plaintiff, Armand Edward Blackmar, 501 Marine Bldg., New Orleans, Louisiana

Service Accepted:

(Signed) N. E. SIMONEAUX
(N. E. Simoneaux),
Assistant United States Attorney, Room 237 Post Office Bldg., New Orleans, La.

CLERK'S CERTIFICATE

I, A. DALLAM O'BRIEN, JR., Clerk of the District Court of the United States for the Eastern District of Louisiana do hereby certify that the foregoing 35 pages contain and form a full, true and complete transcript of the record, in the case entitled "Armand Edward Blackmar versus L. F. Guerre, et al.," No. 2095 of the Civil Action Docket of this Court as made up in accordance with the stipulation of record on appeal.

Witness my hand and the seal of said Court at the City of New Orleans, La., this 5th day of February, A. D., 1951.

A. DALLAM OBRIEN, JR.,
Clerk.

(Seal)

By ANDREW J. BACON,
Deputy Clerk.

[fol. 37] That thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of May 23rd, 1951

No. 13540

ARMAND EDWARD BLACKMAR

versus

L. F. GUERRE, et al.

On this day *this day* this cause was called, and after argument by Rene R. Nicaud, Esq., for appellant and Lansing L. Mitchell, Esq., Assistant United States Attorney for Appellees, was submitted to the Court.

[fol. 38] OPINION OF THE COURT—Filed July 11, 1951

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 13540

ARMAND EDWARD BLACKMER, Appellant,

versus

L. F. GUERRE, et al., Appellees

Appeal from the United States District Court for the Eastern District of Louisiana

(July 11, 1951)

Before Hutcheson, Chief Judge, and Sibley and Strum, Circuit Judges.

STRUM, Circuit Judge:

Appellant sued in the Eastern District of Louisiana under the declaratory judgment act, 28 U. S. C. A. 2201, to secure a judgment declaring him entitled to reinstatement in his

former position with the Veteran's Administration in New Orleans, from which he was discharged by the regional [fol. 39] manager there, which action was affirmed by the U. S. Civil Service Commission. This appeal is from a judgment below dismissing the complaint for improper venue.

Defendants named in the complaint are: "L. F. Guerre, manager, Veteran's Administration regional office No. 3021, New Orleans, Louisiana, and United States Civil Service Commission."[1] Unless venue is properly laid in the Eastern district of Louisiana, and service of process can be effectuated there, both of which the Commission contests, the action must abate, as the Commission is clearly an indispensable party. To nullify the Commission's approval of appellant's dismissal by the Veteran's Administration is one of the principal objects of the complaint, which seeks mandatory relief against the Commission to correct its alleged error.

The complaint alleges that the Commission is represented in New Orleans by a regional director, upon whom process was served, and who resides in the Eastern district of Louisiana. But the suit is against the Commission itself, not the regional director. The complaint is silent as to the domicile of the Commission. The court takes judicial notice, however, that the Commission's official situs and legal domicile is in the District of Columbia, where its plenary powers [fol. 40] are exercised, though many of its subordinate and ministerial functions are necessarily carried out locally by regional officials who act, not by virtue of their own authority, but solely under the control and direction of the Commission. This fact, however, does not authorize suits against the Commission wherever its functions are thus vicariously performed.

Federal jurisdiction of this case is rested, not upon diver-

[1] There was personal service of process on A. J. Leach, regional director, U. S. Civil Service Commission; upon L. F. Guerre, manager, Veteran's Administration regional office; and upon Robert Weinstein, United States Attorney, all at New Orleans. Copies of the summons and complaint were delivered by registered mail to the Attorney General of the United States, and to the U. S. Civil Service Commission, at Washington.

sity of citizenship, but upon the ground that it is a civil action arising under the Constitution and laws of the United States, the requisite jurisdictional amount being involved. 28 U. S. C. A. 1331(b). Appellant also asserts that sec. 10 of the Administrative Procedure Act, 5 U. S. C. A. 1009, confers jurisdiction.

The suit is *in personam*, as it involves only the personal rights or legal relations of the parties and their duty, or breach of duty, with respect thereto. Such a suit may be brought *only* in the judicial district where *all* defendants reside, "except as otherwise provided by law." 28 U. S. C. A. 1391(b). (Italics supplied). We have been directed to no other statute, and have found none, which provides "otherwise" for a suit of this nature. (Compare *Foster-Milburn Co. v. Knight*, 181 Fed. (2) 949; *Shapiro v. Bonanza Hotel Co.*, 185 Fed. (2) 777).

Since the domicile or legal residence of an executive agency of the United States, such as the Civil Service Commission, is ordinarily at the seat of government, suit must necessarily be brought in the District of Columbia under 28 U. S. C. A. 1331(b) where, as here, there is no statutory authority for instituting the suit elsewhere, and the Com- [fol. 41] mission is an indispensable party. *Bradley Lbr. Co. v. Nat'l. Labor Relations Brd.*, 84 Fed. (2) 97; *Podovinnikoff v. Miller*, 179 Fed. (2) 937; *Hartman v. Federal Res. Bank*, 55 Fed. Supp. 801; *Putnam v. Ickes* (CA-D.C.) 78 Fed. (2) 223; *Kentucky Natural Gas Corp. v. Public Serv. Comm., et al.*, 28 Fed. Supp. 509, headnotes 13 and 14, affirmed 119 Fed (2) 417.

The suit could not be transferred to the District of Columbia pursuant to 28 U. S. C. A. 1404(a) or 1406(a), because that would be an improper venue for the defendant L. F. Guerre, a resident of Louisiana. *Mississippi Power Co. v. Federal Power Comm.* (CA-5) 131 Fed. (2) 48, Transfer under those sections is limited to districts where the suit could be originally brought. *Putnam v. Ickes*, 78 Fed. (2) 223. Compare *Foster-Milburn Co. v. Knight*, 181 Fed. (2) 949; *Shapiro v. Bonanza Hotel Co.*, 185 Fed. (2) 777.

For the reasons stated, the judgment appealed from will be affirmed, but since we do not reach the merits the affirmance is without prejudice to further proceedings by appellant in the proper venue.

Affirmed.

[fol. 42] JUDGMENT

Extract from the Minutes of July 11, 1951

No. 13540

ARMAND EDWARD BLACKMAR

versus

L. F. GUERRE, et al.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby affirmed without prejudice to further proceedings by appellant in the proper venue.

[fol. 43] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 43] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 361

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed November 26, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.